IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 14.09.2017
DELIVERED ON : 27.10.2017
CORAM
The HON'BLE MR. JUSTICE R.SUBBIAH
and
The HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No.2720 of 2017
and
CMP.No.15272 of 2017

United India Insurance Co. Ltd.
No.18/116, Sri Saravana Complex,
1st Floor, Mettupalayam Road,
Thudiyalur, Coimbatore. ..Appellant/2nd respondent

..vs..

1.R.Sasikala

2.Minor Rishvanth
rep. by his mother
3.S.Nallammal
4.S.Muthukumar ..Respondents 1 to 3/claimants
4th respondent/1st respondent

Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 28.04.2015 made in MCOP.No.527 of 2012 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Dharapuram.

For Appellant : Mr.S.Arun Kumar
For R1 to R3 : Mr.Ma.Pa.Thangavel

JUDGMENT

(Judgment of the Court was delivered by R. SUBBIAH, J.)

This appeal has been filed by M/s.United India Insurance Co. Ltd, Coimbatore, against the award and decree dated 28.04.2015 passed by the Motor Accidents Claims Tribunal, Subordinate Judge, Dharapuram ('the Tribunal' for short), in MCOP.No.527 of 2012, whereby, the Tribunal awarded a sum of Rs.53,41,600/- with interest at 7.5%pa from the date of petition to the date of deposit, as compensation to the claimants on account of the death of one Ravi, who died in an accident that occurred on 15.04.2012.

2.The brief conspectus of facts is as under:

The respondents 1 to 3 herein, who are the wife, minor son and mother of the deceased Ravi, filed a petition in MCOP.No.527 of 2012 before the Tribunal, claiming a sum of Rs.75,00,000/- as compensation, stating that on 15.04.2012 at about 03.45 pm, while the deceased was driving a TVS Victor Motor cycle bearing Regn.No.TN33 R 5940 from West to East on the Chennimalai to Uthukuli Main Road, near Karattupalayam Pirivu, a Maruti Swift Car bearing Registration No.TN37 BD 1144 owned by the fourth respondent herein and insured with the appellant insurance company, came in a rash and negligent manner from East to West and dashed against the motor cycle, due to which, the deceased was thrown off and he sustained head injuries and died on the way to the hospital. According to the claimants, the deceased Ravi was aged about 43 years at the time of accident. He was running a blue metal cruiser unit. He was also an agriculturist and owner of a cow farm. From all these businesses, he was earning not less than Rs.50,000/- per month.

3.The appellant insurance company filed its statement of counter denying the various averments made in the claim petition.

4.In order to prove the claim of the respondents/claimants, the first respondent/wife examined herself as P.W.1, besides examining one Dinesh Kumar and Saravanan as P.W.2 and P.W.3 and Exs.P1 to P33 documents were marked. On the side of the appellant insurance company, neither any witness was examined nor any document was marked.

5.The Tribunal, on appreciation of the evidence adduced by the parties, held that the accident had occurred as a result of the rash and negligent driving of the driver of the Car insured with the appellant insurance company. Holding so, the Tribunal awarded a sum of Rs.53,41,600/- as compensation to the claimants. Aggrieved over the same, the present appeal has been filed by the insurance company.

6.Mr.S.Arun Kumar, learned counsel for the appellant insurance company confined his argument only with regard to the quantum of compensation awarded by the Tribunal. Learned counsel contended that the Tribunal erred in fixing a sum of Rs.36,000/- per month as the income earned by the deceased at the time of accident, which resulted in awarding an exorbitant sum of Rs.52,41,600/- under the head “loss of income”. According to the learned counsel, though P.W.1/wife of the deceased has, in her evidence, deposed that the deceased was earning not less Rs.50,000/- per month by running a Blue metal cruiser unit and dairy farm, no authenticated document, such as, Income Tax returns etc, was produced to substantiate her evidence before the Tribunal, except marking the licence issued by the District Collector granting lease to the deceased for running such cruiser Unit. Learned counsel further submitted that in support of the income earned by the deceased, Exs.P29-daily register for the year 2011-12, P30-parade for the years 2011 and 2013, P31-Profit and Loss Account for the year 2011-2012 and P32-salary certificate of the deceased for the years 2011 and 2012 were marked through P.W.3 Auditor of the cruiser unit. However, P.W.3 has, in his cross examination, categorically admitted that no income tax returns was filed by the deceased before the competent authority and no bills and vouchers relating to Exs.P29 and P30 documents were produced before the Tribunal. Thus, in the absence of any concrete documentary evidence, it is hardly believable that the deceased was earning not less than Rs.50,000/- per month. Therefore, learned counsel prayed that the monthly income of the deceased at Rs.36,000/- fixed by the Tribunal has to be reduced and the compensation awarded by the Tribunal under the head "loss of income" has to be recalculated.

7.Opposing the contention so raised on the side of the appellant insurance company, Mr.Ma.Pa.Thangavel, learned counsel for the respondents/claimants contended that P.W.1 has categorically stated that after the death of her husband, they suffered with heavy financial loss and they are unable to continue the businesses carrying on by the deceased. Apart from that, the licence granted by the District Collector to permit the deceased to run cruiser unit was marked as Ex.P14. Through P.W.3, who was the auditor of the cruiser unit, daily register for the year 2011-12, parade for the years 2011 and 2013, Profit and Loss Account for the year 2011-2012 and salary certificate of the deceased for the years 2011 and 2012 were marked as Exs.P29 to P32 respectively, which would undoubtedly go to show that the deceased was running a cruiser unit, as such, it is incorrect to state that no substantial document was produced to prove the income of the deceased. Therefore, learned counsel submitted that the Tribunal has considered all the facts and circumstances of the case and awarded the compensation, which is just, fair and reasonable and which warrants no interference by this Court.

8.We have carefully considered the submissions made by the learned counsel on either side and perused the records.

9.In this appeal, the appellant insurance company has challenged only the quantum of compensation awarded by the Tribunal. As such, it is not necessary to deal with the manner of accident and the liability of the appellant to pay compensation to the claimants as held by the Tribunal.

10.As regards the quantum of compensation, the Tribunal has fixed a sum of Rs.36,000/- as the monthly income of the deceased. After adding 30% towards future prospects and deducting 1/3rd amount towards personal expenses, the Tribunal has arrived at Rs.31,200/- as the monthly loss of income. Thereafter, applying the multiplier '14', the Tribunal has determined the compensation under the head "loss of income" at Rs.52,41,600/- (Rs.31,200/- x 12 x 14). It is contended by the learned counsel for the appellant insurance company that in the absence of any documentary evidence, the Tribunal ought not to have fixed a sum of Rs.36,000/- as the monthly income of the deceased, while calculating the compensation under the head "loss of income", whereas, the same is refuted by the learned counsel for the respondents/claimants, contending that sufficient oral and documentary evidence were adduced before the Tribunal to prove the avocation and the income earned by the deceased at the time of accident. In support of their respective contentions, they relied on the oral and documentary evidence adduced before the Tribunal.

11.It could be seen from the evidence of P.W.1/wife of the deceased that her husband was an agriculturist and he owned a farm, where cows were raised for the production of milk. Further, he was running a cruiser unit by name M/s.S.R.S. Blue Metal Cruiser Unit. By carrying out all those businesses, he was earning not less than Rs.50,000/- per month. Through P.W.1, the licence granted by the District Collector to the deceased to run a cruiser unit was marked as Ex.P14 and the lease agreements between the deceased and the District Collector for the years 2006-2011 and 2012-2017 were also marked as Exs.P15 and P16 respectively. That apart, P.W.3/auditor of the cruiser unit, has deposed that the deceased was running the cruiser unit. Through him, the daily register, parade and profit and loss account relating to the said cruiser unit and the salary certificate of the deceased were marked as Exs.P29 to P32. Thus, the aforesaid oral and documentary evidence would go to prove the avocation of the deceased. However, there is no authenticated document to prove the income earned by the deceased. As rightly contended by the learned counsel for the appellant insurance company, if the deceased was earning not less than Rs.50,000/- per month, he would have been an Income Tax Assessee. But, no income tax returns had been filed by the deceased before the competent authority. Further, no bills and vouchers relating to Exs.P29 and P30 documents were produced before the Tribunal. The said fact was also admitted by P.W.3 in his cross examination. When such being the case, the Tribunal ought not to have fixed a sum of Rs.36,000/- as the monthly income of the deceased. Therefore, considering the facts and circumstances of the case and taking note of the aforesaid evidence, it would be just and proper to fix a sum of Rs.25,000/- as the monthly income of the deceased.

Accordingly, the compensation awarded by the Tribunal under the head "loss of income" is hereby recalculated by taking the monthly income of the deceased at Rs.25,000/- as follows:

Salary of the deceased	= Rs.25,000/-
Add 30% of Rs.25,000/- towards future prospects	7,500/-
	....
	Rs.32,500/-
Less 1/3rd amount towards personal expenses	10,833/-
	....
loss of monthly income	Rs.21,667/-
	....

If the multiplier "14" is applied, then the loss of income to the family of the deceased works out to Rs.36,40,056/- (Rs.21,667/- x 12 x 14). Thus, the sum of Rs.52,41,600/- awarded by the Tribunal is hereby reduced to Rs.36,40,056/- under the head "loss of income".

12.With regard to the compensation awarded under other conventional heads, the Tribunal has awarded only a sum of Rs.40,000/- towards loss of consortium to the wife, which, in our view, is very meagre. Hence, the same is hereby enhanced to Rs.1,00,000/-. Similarly, the compensation awarded under the head "loss of love and affection" to the tune of Rs.30,000/- to the son and Rs.20,000/- to the mother of the deceased is hereby enhanced to Rs.1,00,000/- and 50,000/- respectively.

13.That apart, the Tribunal has awarded only a sum of Rs.10,000/- towards funeral and transport expenses, which appears to be very low. We are of the opinion that the 'funeral expenses' does not mean the fee paid in the crematorium or fee paid for the use of space in the cemetery and it includes many other expenses in connection with funeral and if the deceased is a follower of any particular religion, there are several religious practices and conventions pursuant to death in a family, which are quite expensive. Therefore, we are inclined to award a sum of Rs.60,000/- towards funeral and transport expenses. Accordingly, a sum of Rs.10,000/- awarded by the Tribunal is hereby enhanced to Rs.60,000/- under this count.

14.Further, there is no compensation awarded by the Tribunal under the head "loss of estate". Considering the facts and circumstances of the case, it would be fair and just to award a sum of Rs.50,000/-. Accordingly, a sum of Rs.50,000/- is hereby awarded under this head.

15.In view of the aforesaid discussion, the total compensation of Rs.53,41,600/- awarded by the Tribunal is hereby reduced to Rs.40,00,000/-, the details of which, are as follows:

Loss of income to the family	: Rs.36,40,056/-
Loss of Consortium	: Rs. 1,00,000/-
Loss of love and affection to the son	: Rs. 1,00,000/-
Loss of love and affection to the Mother	: Rs. 50,000/-
Transport and Funeral expenses	: Rs. 60,000/-
Loss of estate	: Rs. 50,000/-
Total	Rs.40,00,056/-

Rounded off at Rs.40,00,000/-

16.The Appellant Insurance Company is directed to deposit the entire amount as awarded by this Court, after deducting the amount already deposited, if any, along with interest at 7.5% per annum from the date of claim petition till the date of deposit and costs, to the credit of MCOP.No.527 of 2012 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Dharapuram, within a period of six weeks from the date of receipt of a copy of this judgment. In view of the above modification of the compensation amount awarded by the Tribunal, the first respondent/wife is entitled to get Rs.15,00,000/-; the second respondent/minor son is entitled to get Rs.17,00,000/-; and the third respondent/mother of the deceased is entitled to get compensation of Rs.8,00,000/-. On such deposit by the appellant insurance company, the respondents 1 and 3 are permitted to withdraw their respective shares. Regarding the shares of the second respondent minor son, the Tribunal is directed to invest the same in any one of the nationalized banks in a fixed deposit, till he attains majority. The first respondent/mother is permitted to withdraw the interest accrued on the deposit of the minor's shares once in three months directly from the bank concerned.

17.Accordingly, the Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
Subordinate Judge, Dharapuram.

copy to

The Section Officer
VR Section, High Court Madras

+1 cc to Mr.S.Arunkumar Advocate sr 76164
+1 cc to Mr.Ma.P.thangavel Advocate sr 76433

C.M.A.No.2720 of 2017

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